

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL NO. 3:08CV29-V
(3:01CR202-V)

ALBERT ESPOSITO,)
)
Petitioner,)
)
vs.) **MEMORANDUM**
) **AND ORDER**
UNITED STATES OF AMERICA,)
)
Respondent.)

THIS MATTER is before the Court on Petitioner's "Motion Pursuant to Federal Rule of Civil Procedure 60(b)(6) filed September 8, 2009 (Doc. No. 33.) By Order dated April 2, 2009, the undersigned denied and dismissed Petitioner Motion to Vacate in a comprehensive fifteen-page Order. (Doc. No. 23.) On April 28, 2009, Petitioner filed a Notice of Appeal in the Fourth Circuit Court of Appeals. (Doc. No. 25.) On September 3, 2009, the Fourth Circuit denied Petitioner a certificate of appealability and dismissed his appeal. (Doc. No. 31.) By the instant motion, it appears that Petitioner seeks reconsideration of this Court's April 2, 2009 Order denying his Motion to Vacate. Petitioner contends that there was a defect in the integrity of the proceedings. It seems Petitioner is arguing that he was denied effective assistance of counsel during critical stages of his prior proceeding and that the record before this Court was inadequate. He asks for discovery to flesh out his specific claims of ineffective assistance of counsel and for counsel to be appointed to represent him.

The Fourth Circuit has decided Petitioner's appeal, therefore, this Court is without authority to essentially reopen Petitioner's case. See Fed. R. Civ. Pro. 60(a). Indeed, Petitioner has received all the review to which he is entitled as the Fourth Circuit has ruled on his appeal. Therefore, Petitioner's motion is denied. See also, United States v. Bell, 5 F.3d 64, 66 (4th Cir. 1993) (the law of the case doctrine "forecloses relitigation of issues expressly or impliedly decided by the appellate court.")¹

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion for Reconsideration (Doc. No. 33) is Denied.

SO ORDERED.

Signed: September 11, 2009



Richard L. Voorhees
United States District Judge



¹ Further, to the extent Petitioner is continuing to attack his federal conviction, his motion would be considered a successive petition filed without permission from the Fourth Circuit Court of Appeals.